

REMARKS

This responds to the Office Action dated December 27, 2007.

No claim is currently amended. Claims 1-5, 9-18 and 22-35 are pending in this application as indicated in the Office Action. However, as discussed below, Applicant believes that claims 1-42 should be pending in this application.

Request for Clarification on Status and Claims

The Office Action states, in paragraph 1, that claims 1-5, 9-18, and 22-35 are pending, and that claims 6-8, 19-21, and 36-42 have been withdrawn from further consideration by the examiner. However, because claims 6-8, 19-21, and 36-42 have been merely withdrawn but never canceled, Applicant believes that their status should be pending in the present application.

Claims 6-8, 19-21, and 36-42 were withdrawn in response to the Restriction Requirement of April 9, 2007. As stated in the Restriction Requirement, “Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additionally species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.” Based on the species identified in the Restriction Requirement, Applicant believes that at least claims 1 is generic to claims 6-8, and claim 14 is generic to claims 19-21. Therefore, it is believed that Applicant is entitled to consideration of at least claims 6-8 and 19-21 upon allowance of claims 1 and 14.

Applicant respectfully requests a clarification of the status of the claims in the next official communication.

§103 Rejection of the Claims Using Nemirovski and Anderson

Claims 1-5 and 9-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski (US 6,671,379, herein “Nemirovski”) in view of Anderson (US 5,721,783, herein “Anderson”).

Claim 1

The rejection is respectfully traversed. Applicant believes that the combination of references as stated in the Office Action is improper and does not result in the claimed subject matter.

The Office Action, in paragraph 3, states that “Nemirovski teaches ... a wireless transmitter (14 in fig. 1)” and “Anderson teaches an earmold housing ... the wireless transmitter”. However, Nemirovski teaches away from including a wireless transmitter in an earmold as recited in claim 1. For example, Nemirovski states that “[t]he ear microphone assembly allows for separation of a speech input device for a cellular, or wireless, telephone from an RF transceiver of the telephone” (column 3, lines 20-23). At least for this reason, it is believed that the combination of Nemirovski and Anderson is improper.

It is also believed that Nemirovski and Anderson, individually or in combination with each other and/or the reasoning given in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in Nemirovski and Anderson, among other things, a wireless transmitter to transmit a first wireless signal representing an occluded sound, and an earmold housing the wireless transmitter, as recited in claim 1. Specifically, Applicant is unable to find in Nemirovski and Anderson how a communication device such as a wireless telephone is modified to be included in Anderson’s earmold as suggested in the Office Action, and is also unable to find in the Office Action any reasoning that remedies this deficiency. At least for this reason, it is believed that the combination of Nemirovski and Anderson as stated in the Office Action does not result in the claimed subject matter.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claims 2-5 and 9-13

Applicant respectfully traverses the rejection. Claims 2-5 and 9-13 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2-5 and 9-13.

Applicant respectfully requests reconsideration and allowance of claims 2-5 and 9-13.

§103 Rejection of the Claims Using Nemirovski and Dar

Claims 14-18 and 22-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski in view of Dar (US 5,761,319, herein “Dar”).

Claim 14

The rejection is respectfully traversed. Applicant believes that the combination of references as stated in the Office Action is improper and does not result in the claimed subject matter.

The Office Action, in paragraph 4, states that “Nemirovski teaches ... a wireless transmitter (14 in fig. 1)” and “Dar teaches that a behind-the-ear (BTE) module attached to the ITE module”. However, Nemirovski teaches away from including a wireless transmitter in a BTE module as recited in claim 1. For example, Nemirovski states that “[t]he ear microphone assembly allows for separation of a speech input device for a cellular, or wireless, telephone from an RF transceiver of the telephone” (column 3, lines 20-23). At least for this reasons, it is believed that the combination of Nemirovski and Dar is improper.

It is also believed that Nemirovski and Dar, individually or in combination with each other and/or the reasoning given in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Nemirovski and Dar, among other things, a behind-the-ear (BTE) module including a wireless transmitter to transmit a first wireless signal representing an occluded sound, as recited in claim 14. Specifically, Applicant is unable to find in Nemirovski and Dar how a communication device such as a wireless telephone is modified to be included in Dar’s BTE module as suggested in the Office Action, and is also unable to find in the Office Action any reasoning that remedies this deficiency. At least for this reason, it is believed that the combination of Nemirovski and Dar as stated in the Office Action does not result in the claimed subject matter.

Applicant respectfully requests reconsideration and allowance of claim 14.

Claims 15-18 and 22-25

Applicant respectfully traverses the rejection. Claims 15-18 and 22-25 are dependent on claim 14, which is believed to be allowable for at least the reasons set forth above. Therefore,

the discussion above for claim 14 is incorporated herein to support the patentability of claims 15-18 and 22-25.

Applicant respectfully requests reconsideration and allowance of claims 15-18 and 22-25.

§103 Rejection of the Claims Using Nemirovski, Brander, and Dar

Claims 26-27 and 30-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski in view of Brander (US 5,991,419, herein “Brander”) and Dar.

Claim 26

The rejection is respectfully traversed. Applicant believes that the combination of references as stated in the Office Action is improper and does not result in the claimed subject matter.

The Office Action, in paragraph 3, states that “Nemirovski teaches ... a first ear-level device including ... a wireless transmitter (14)”, “Brander teaches a second ear-level device”, and “Dar teaches that the first and second ear-level devices are each one of a behind-the-ear (BTE) device ... and an in-the-ear (ITE) device”. However, Nemirovski teaches away from including a wireless transmitter in an ear-level device being one of a BTE device and an ITE device as recited in claim 1. For example, Nemirovski states that “[t]he ear microphone assembly allows for separation of a speech input device for a cellular, or wireless, telephone from an RF transceiver of the telephone” (column 3, lines 20-23). At least for this reasons, it is believed that the combination of Nemirovski, Brander, and Dar is improper.

It is also believed that Nemirovski, Brander, and Dar, individually or in combination with each other and/or the reasoning given in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Nemirovski, Brander, and Dar, among other things, a first ear-level device including a wireless transmitter to transmit a first wireless signal representing an occluded sound, the first ear-level device being one of a behind-the-ear (BTE) device and an in-the-ear (ITE) device, as recited in claim 26. Specifically, Applicant is unable to find in Nemirovski, Brander, and Dar how a communication device such as a wireless telephone is modified to be included in Dar’s BTE or ITE device as suggested in the Office Action, and is also unable to find in the Office Action any reasoning that remedies this

deficiency. At least for this reason, it is believed that the combination of Brander, and Dar as stated in the Office Action does not result in the claimed subject matter.

Applicant respectfully requests reconsideration and allowance of claim 26.

Claims 27 and 30-35

Applicant respectfully traverses the rejection. Claims 27 and 30-35 are dependent on claim 26, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 26 is incorporated herein to support the patentability of claims 27 and 30-35.

Applicant respectfully requests reconsideration and allowance of claims 27 and 30-35.

§103 Rejection of the Claims Using Nemirovski, Brander, Dar, and Kvaloy

Claims 28-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nemirovski as modified by Brander and Dar as applied to claim 26 above, and further in view of Kvaloy (US 6,728,385).

Applicant respectfully traverses the rejection. Claims 28-29 are dependent on claim 26, which is believed to be allowable for at least the reasons set forth above. It is believed that the addition of Kvaloy does not remedy the deficiency of Nemirovski, Brander, and Dar as discussed for claim 26 above. Therefore, the discussion above for claim 26 is incorporated herein to support the patentability of claims 28-29.

Applicant respectfully requests reconsideration and allowance of claims 28-29.

Reentry of Withdrawn Claims Requested

Claims 6-8, 19-21, and 36-42 were withdrawn from consideration. In light of what is believed to be allowable as discussed above, Applicant respectfully requests reentry and consideration of at least claims 6-8 and 19-21 in this application.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date April 25, 2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25 day of April 2008.

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